



Office of the Attorney General  
State of Texas

July 15, 1993

DAN MORALES  
ATTORNEY GENERAL

Mr. George Gault  
City of Mineral Wells  
P. O. Box 817  
Mineral Wells, Texas 76067

OR93-462

Dear Mr. Gault:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. art. 6252-17a. Your request was assigned ID# 20087.

The City of Mineral Wells (the "city") received an open records request for a city employee's job application, resume, and a test that the employee completed as part of the application process. You contend that the requested information comes under the protection of sections 3(a)(1), 3(a)(2), and 3(a)(17) of the Open Records Act.

Section 3(a)(2) protects, among other things, "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The scope of section 3(a)(2) protection, however, is very narrow. *See* Open Records Decision No. 336 (1982) at 2; *see also* Attorney General Opinion JM-36 (1983) at 1. The test for section 3(a)(2) protection is the same as that for information that section 3(a)(1) protects under the doctrine of common-law privacy: to be protected from required disclosure the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person, *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

A prior decision of this office governs the resolution of your request. In Open Records Decision No. 455 (1987) at 8-9 (copy enclosed) this office held that each of the following types of information directly bears on an applicant's suitability for employment, and thus common-law privacy does not protect them: applicants' educational training; names and addresses of former employers; dates of employment; kind of work, previous salary, and reasons for leaving; names, occupations, addresses and phone numbers of character references; job performances or abilities; birth dates, height

and weight, marital status, and social security numbers. Consequently, you must release these types of information from both the employment application and the resume.

For similar reasons, this office generally believes that whether a public employee previously has been convicted of a felony also is of legitimate public concern; consequently, section 3(a)(2) does not protect such information. *Compare United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 780 (1989) (stating that criminal history of private citizen is private) with *Plante v. Gonzalez*, 575 F.2d 1119, 1135 (5th Cir. 1978), *cert. denied*, 439 U.S. 1129 (1979) (stating that privacy rights of public employees not as broad as those of private citizen).

Consequently, we conclude that the city must release the application and resume in their entirety. Further, for the reasons discussed above, we conclude that common-law privacy does not protect the test completed by the employee; the city therefore must release this information as well.<sup>1</sup> See also Open Records Decision No. 444 (1986) at 5 (stating that public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employee, and section 3(a)(2) therefore does not except this information).

Finally, we address whether the city must release the home address and telephone number of the employee. Section 3(a)(17) of the Open Records Act requires that the city withhold an employee's home address and telephone number, but only to the extent that the employee has elected to keep this information confidential in compliance with section 3A of the Open Records Act. The employee must have made this election prior to the city's receipt of the current open records request; otherwise, the city must release the information. Open Records Decision No. 530 (1989) at 5.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Kimberly K. Oltrogge  
Assistant Attorney General  
Open Government Section

KKO/RWP/jmn

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<sup>1</sup>The fact that the employee did not receive the job for which she tested is irrelevant.

Ref.: ID# 20087

Enclosures: Open Records Decision No. 455  
Submitted documents

cc: Ms. Jenny Cockerham  
Mineral Wells Index  
P. O. Box 370  
Mineral Wells, Texas 76068  
(w/o enclosures)